IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent, v. JOEL P. MCFARLANE, Appellant.	)	DIVISION ONE No. 62749-0-I UNPUBLISHED OPINION FILED: April 12, 2010

Dwyer, A.C.J. — Joel McFarlane challenges his conviction for failing to register as a sex offender, in violation of RCW 9A.44.130(11). McFarlane's conviction was based on evidence that he had moved from the address at which he was registered to a residence in a different county. Notwithstanding McFarlane's claim that he moved only because inclement weather prevented him from accessing his registered residence for five months, there was sufficient evidence to support his conviction. Further, we conclude that RCW 9A.44.130 is not unconstitutionally vague as applied to the circumstances herein. Accordingly, we affirm.

I

McFarlane is required to register as a sex offender. He was advised of his obligation to register, and he properly registered for several years.

In 2003, McFarlane moved from the town of Diablo, which is located in Whatcom County, to the town of Marblemount, which is located in Skagit County.

At that time, he updated his registered address to reflect his Marblemount residence. He lived in an isolated cabin in the woods that was difficult to access in the winter months. In the winter of 2007-2008, heavy snowfall and a fallen tree prevented McFarlane from accessing his cabin. During this time, McFarlane stayed at a friend's home, which is the same house in Diablo in which he had lived previously.

In February 2008, McFarlane twice telephoned the Skagit County Sheriff's Office, reporting to a support technician that he was staying in Diablo temporarily because he was snowed out of his cabin.[1] At the beginning of March 2008, a Skagit County sheriff's deputy went to McFarlane's Marblemount cabin to perform a routine check. He was unable to find McFarlane, but the next day he drove to Diablo, where he located and arrested McFarlane. Two Diablo residents reported that McFarlane's distinctive vehicle had been regularly parked outside the Diablo home during the winter of 2007-2008. When officers asked McFarlane how long he had been living in Diablo, he responded that he had been there "since the snow began" but he "then corrected himself that it was approximately nine months."[2]

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[1] McFarlane did not testify, so there is no evidence indicating that he told the Skagit County Sheriff's Office support technician, Laurie Jarolimek, anything more specific about his circumstances. Jarolimek testified that she had informed McFarlane that if his stay in Diablo "was just temporary due to the weather, he did not need to come in and change his address." The trial court stated in its oral findings that "if Mr. McFarlane had given Ms. Jarolimek the picture that this court has received today during the testimony, her answer would have been far different. . . . This court has no doubt that the response would have been: List [the Diablo] address as your registered address."

[2] The court later orally found that in stating that he had been in Diablo for nine months, McFarlane had "overextended the amount of time he was in Diablo."

McFarlane was charged with failing to register as a sex offender because he had failed to notify the Skagit County Sheriff's Office that he had moved to Whatcom County. Based on the evidence presented at a bench trial, the trial court found that,

> During the winter months within the time period of November, 2007, through Mar[ch] 3, 2008, the defendant was unable to access his residence at Marblemount.

Finding of Fact 4. And

> During that time period the defendant resided at an address in Diablo, WA (Whatcom County).

Finding of Fact 5.

McFarlane was found guilty of a class C felony for failing to register as a sex offender and was sentenced to five days incarceration, which was the amount of time he had already served. He appeals.

II

McFarlane first contends that there was insufficient evidence to support the trial court's determination that he had moved to a new residence and that he had knowingly failed to register. We disagree.

Evidence is sufficient to support a conviction if, viewed in the light most favorable to the State, any rational trier of fact could have found that the essential elements of the charged crime were proved beyond a reasonable doubt. State v. Hosier, 157 Wn.2d 1, 8, 133 P.3d 936 (2006); State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). On appeal, all reasonable

inferences from the evidence are drawn in favor of the State and interpreted most strongly against the defendant. Hosier, 157 Wn.2d at 8. "A claim of insufficiency admits the truth of the State's evidence and all inferences that reasonably can be drawn therefrom." Salinas, 119 Wn.2d at 201. We will reverse a conviction for insufficient evidence only when no rational trier of fact could have found that all of the elements of the crime were proved beyond a reasonable doubt. State v. Smith, 155 Wn.2d 496, 501, 120 P.3d 559 (2005).

McFarlane was charged with failing to register as a sex offender, in violation of RCW 9A.44.130(11). RCW 9A.44.130(11)(a) states:

> A person who knowingly fails to comply with any of the requirements of this section is guilty of a class C felony if the crime for which the individual was convicted was a felony sex offense as defined in subsection (10)(a) of this section.

The purpose of the sex offender registration statute is to assist law enforcement agencies' efforts to protect their communities from reoffense by convicted sex offenders. Laws of 1990, ch. 3, § 401. The statute accomplishes this goal "by keeping law enforcement informed of the whereabouts of sex offenders who may reoffend." State v. Watson, 160 Wn.2d 1, 10, 154 P.3d 909 (2007). "Registration provides law enforcement agencies with an address where they can contact a sex offender." State v. Pray, 96 Wn. App. 25, 28-29, 980 P.2d 240 (1999).

To ensure that law enforcement authorities are aware of a sex offender's whereabouts and can contact a sex offender who moves from his or her county

of registration to another county, the registration statute requires the offender to provide written notice of the move to the sheriffs of both the new county of residence and the previous county of residence. RCW 9A.44.130. The statute provides:

> If any person required to register pursuant to this section changes his or her residence address within the same county, the person must send signed written notice of the change of address to the county sheriff within seventy-two hours of moving. *If any person required to register pursuant to this section moves to a new county*, the person must send signed written notice of the change of address at least fourteen days before moving to the county sheriff in the new county of residence and must register with that county sheriff within twenty-four hours of moving. The person must also send signed written notice within ten days of the change of address in the new county to the county sheriff with whom the person last registered. The county sheriff with whom the person last registered shall promptly forward the information concerning the change of address to the county sheriff for the county of the person's new residence.

RCW 9A.44.130(5)(a) (emphasis added). Thus, in this case, the State was required to prove that McFarlane had, in fact, moved to a new residence in another county and that he failed to properly notify the appropriate authorities of the move.

Central to our analysis of whether there was sufficient evidence to convict McFarlane are the meanings of the terms "residence" and "move" as used in the statute. Unsurprisingly, the Washington criminal code, Title 9A RCW, does not define these terms. "In the absence of a specific statutory definition, words in a statute are given their ordinary meaning." Pray, 96 Wn. App. at 29. In past

cases discussing the meaning of "residence" in the sex offender registration statute, we have adopted a dictionary definition. Pray, 96 Wn. App. at 29; State v. Pickett, 95 Wn. App. 475, 478, 975 P.2d 584 (1999). Webster's Dictionary defines "residence" as:

> **1 a:** the act or fact of abiding or dwelling in a place for some time: an act of making one's home in a place . . . **2 a** (1) **:** the place where one actually lives or has his home as distinguished from his technical domicile (2) **:** a temporary or permanent dwelling place, abode, or habitation to which one intends to return as distinguished from a place of temporary sojourn or transient visit

Webster's Third New International Dictionary Unabridged 1931 (1969).[3] This court has held that "[r]esidence as the term is commonly understood is the place where a person lives as either a temporary or permanent dwelling, a place to which one intends to return, as distinguished from a place of temporary sojourn or transient visit." Pickett, 95 Wn. App. at 478. Based on this definition, we have previously concluded that "even a temporary dwelling may be considered a 'residence.'" Pray, 96 Wn. App. at 29.[4] In addition, "move" is defined, in

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[3] Black's Law Dictionary defines "residence" similarly, as

> **1.** The act or fact of living in a given place for some time. . . . **2.** The place where one actually lives, as distinguished from a domicile . . . *Residence* usu[ally] just means bodily presence as an inhabitant in a given place; *domicile* usu[ally] requires bodily presence plus an intention to make the place one's home. A person thus may have more than one residence at a time but only one domicile. Sometimes, though, the two terms are used synonymously.

Black's Law Dictionary 1423 (9th ed. 2009).

[4] McFarlane also argues that the term "residence" is ambiguous. "A statute is ambiguous if we can interpret it in more than one reasonable way." State v. Stratton, 130 Wn. App. 760, 764, 124 P.3d 660 (2005). The term "residence" has been held to be ambiguous when the defendant had been sleeping in his car outside the house that was his registered residential address. Stratton, 130 Wn. App. 765. But the term was ambiguous only as applied to the particular facts of that case because "residence" could mean either a "place" or specifically a "building." Stratton, 130 Wn. App. at 765. Such an ambiguity is not present here.

relevant part, as:

> **1** . . . **d.** To settle in a new or different place (as of residence, business) usu[ally] abandoning a former one**;** change one's abode or location

Webster's Third International Dictionary at 1479.

A sex offender need not intend that a place will be his or her permanent residence in order to trigger the registration requirements. Pray, 96 Wn. App. at 30. "Under the definitions above, a temporary habitation may be a residence." Pray, 96 Wn. App. at 30. Therefore, an offender with a fixed residence must register the address at which he or she will be staying even if that location is only a temporary one, rather than a permanent one. Pray, 96 Wn. App. at 29–30.

The trial court found that McFarlane could not access his Marblemount cabin for five months and that he moved to and resided in Diablo during those five months. In light of the ordinary meanings of the terms "residence" and "move," as described above, the evidence presented at trial supported these findings. McFarlane had telephoned the Skagit County Sherriff's Office in February 2008 to report that he was snowed out of his Marblemount cabin and was staying in Diablo. Neighbors in Diablo testified that McFarlane's vehicle had been parked at the Diablo house every day during the winter months of 2007-2008. The police officers arrested McFarlane in Diablo, where he had been sleeping, whereupon McFarlane admitted to the officers that he had been

staying in Diablo for an extended period of time.

The ordinary meanings of "move" and "residence" include a non-permanent relocation from one abode to another, similar to the relocation made by McFarlane. Based on the evidence presented to the trial court, we conclude that a rational trier of fact could have reasonably concluded that McFarlane had moved to a new residence in a county different than the county wherein he had been registered.

III

McFarlane also contends that the State failed to prove that he *knowingly* failed to register. We disagree.

An offender acts "knowingly" if

> (i) he or she is aware of a fact, facts, or circumstances or result described by a statute defining an offense; or (ii) he or she has information which would lead a reasonable person in the same situation to believe that facts exist which facts are described by a statute defining an offense.

RCW 9A.08.010(1)(b).

McFarlane contends that he did not knowingly violate the statute because he did not know that the statute required him to change his registered address when he temporarily moved to Diablo. We have previously held that it can be inferred that a sex offender is aware of his or her statutory obligations, and thus knowingly fails to comply with the sex offender registration statute, where there is evidence that the sex offender was informed about the registration requirements and had complied with the statute several times before. State v. Castillo, 144 Wn. App. 584, 589-90, 183 P.3d 355 (2008); State v. Vanderpool, 99 Wn. App. 709, 713–14, 995 P.2d 104 (2000). In contrast, the State does not prove that an offender knowingly violates the statute when no evidence is presented that the offender was aware of the fact that constituted his violation of the statute. State v. Drake, 149 Wn. App. 88, 91, 201 P.3d 1093 (registered offender was ousted from his apartment but had not been informed of the ouster

at the time of the sheriff's routine check), review denied, 166 Wn.2d 1026 (2009).

McFarlane does not claim that he was unaware he was staying in Diablo. Rather, he contends that he did not know that his temporary move to Diablo was a violation of the statute. But McFarlane had been informed about the requirements of the sex offender registration statute and had complied with those requirements for several years. Specifically, McFarlane knew the requirements for registering his new residential address when he moved to a new county, as he had previously complied with those provisions when he moved from Diablo to Marblemount in 2003. In addition, he was aware that he had moved to a new residence in another county for at least a temporary stay. Indeed, he said as much to the sheriff's office employee and to the arresting officers. Therefore, it was reasonable for the trial court to infer that McFarlane knew of the registration requirements. See Castillo, 144 Wn. App. at 590.

IV

McFarlane next contends that the statute is unconstitutionally vague, in violation of the federal constitution's Due Process Clause,[5] because, under the dictionary definitions of "residence," his stay in Diablo could qualify either as a temporary residence requiring new registration or as a temporary sojourn. We disagree.

[5] "[N]or shall any state deprive any person of life, liberty, or property, without due process of law." U.S. CONST. amend. XIV §, 1.

We review de novo a challenge to the constitutionality of a statute. State v. Shultz, 138 Wn.2d 638, 643, 980 P.2d 1265 (1999). Where the statute does not impinge on First Amendment rights, we evaluate a vagueness challenge "by examining the statute as applied under the particular facts of the case." State v. Coria, 120 Wn.2d 156, 163, 839 P.2d 890 (1992). We presume that statutes are constitutional. City of Spokane v. Vaux, 83 Wn.2d 126, 129, 516 P.2d 209 (1973).

A statute violates the due process clause if (1) it "'does not define the criminal offense with sufficient definiteness that ordinary people can understand what conduct is proscribed'" or (2) it "'does not provide ascertainable standards of guilt to protect against arbitrary enforcement.'" State v. Williams, 144 Wn.2d 197, 203, 26 P.3d 890 (2001) (quoting City of Bellevue v. Lorang, 140 Wn.2d 19, 30, 992 P.2d 496 (2000)).

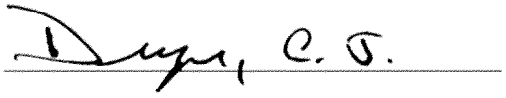
With respect to the first prong,

> "'[V]agueness in the constitutional sense is not mere uncertainty.'" [City of Spokane v.] Douglass, 115 Wn.2d [171] at 179[, 795 P.2d 693 (1990)] (quoting State v. Smith, 111 Wn.2d 1, 10, 759 P.2d 372 (1988)). Thus, "'a statute is not unconstitutionally vague merely because a person cannot predict with complete certainty the exact point at which his [or her] actions would be classified as prohibited conduct.'" [State v.] Halstien, 122 Wn.2d [109] at 118[, 857 P.2d 270 (1993)] (alteration in original) (quoting [City of Seattle v.] Eze, 111 Wn.2d [22] at 27[, 759 P.2d 366 (1988)]). Instead, a statute meets constitutional requirements "[i]f persons of ordinary intelligence can understand what the ordinance proscribes, notwithstanding some possible areas of disagreement." Douglass, 115 Wn.2d at 179 (citing State v. Motherwell, 114 Wn.2d 353, 369, 788 P.2d 1066 (1990)).

Watson, 160 Wn.2d at 7. With respect to the second prong, "the court examines the terms of the statute to see if they contain adequate standards to guide law enforcement officials" without using "'inherently subjective terms.'" State v. Myles, 127 Wn.2d 807, 812, 903 P.2d 979 (1995) (quoting Douglass, 115 Wn.2d at 181). A statute is not unconstitutional merely because it requires that a law enforcement officer employ his or her subjective evaluation to determine if the statute has been violated. Rather, the statute is unconstitutionally vague only if it "invites an inordinate amount of discretion." Myles, 127 Wn.2d at 812.

As applied to the facts of this case, the statute is not vague. McFarlane's five-month stay in a home located in another county fits well within the common definitions of "residence." No reasonable person could believe that living at a particular location for five months constitutes only a "temporary sojourn." The statute is not void for vagueness.

Affirmed.



We concur: